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# CRIMINAL LAW AND PROCEDURE IN EUROPE

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(Report of the Committee of the Institute)

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JOHN R. OLIVER,<sup>1</sup> Chairman

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The Committee on Criminal Law and Procedure in Europe came into existence as the result of some correspondence, printed in our Journal of July, 1919, and of a discussion on the floor of our yearly meeting in Boston in September of the same year. It was pointed out that the formation of new European countries and nationalities would doubtless result in the revision of ancient criminal codes and in interesting experiments with modern ones. The matter was referred to the Executive Committee of the Institute. In November, 1919, the Executive Committee created the Committee on Criminal Law and Procedure in Europe. Headquarters were established in Baltimore, at the Court House, in the office of Dr. Oliver. The necessary stationery for foreign correspondence was printed. Careful records have been kept of all the activities of the committee.

The work was no sooner begun than it became evident how large were the possibilities of the committee's activities, how extended the field and how interesting the possible results. Two main lines of endeavor were at once laid down.

1. The committee aimed to secure for the Institute certain definite scientific and authoritative sources of information on the following subjects connected with Criminal Law in the various countries of Europe.

(a) Changes and developments in Criminal Law and Procedure during and war and since the armistice.

(b) Changes in the general atmosphere of the Criminal Courts, especially those developments which indicate a more enlightened and modern treatment of criminological problems.

(c) Changes in Penology: prison reform and kindred matters.

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<sup>1</sup>The personnel of the committee is as follows:

Dr. John R. Oliver, Baltimore, Md.

Dr. George Kirchwey, School of Philanthropy, New York.

George F. Deiser, Drexel Bldg., Philadelphia.

Benjamin Malzberg, University of Paris, Paris.

Edwin R. Keedy, University of Pennsylvania Law School, Philadelphia.

John Koren, Pemberton Square, Boston.

William Healy, M. D., Judge Baker Foundation, Boston.

(d) The influence of the more radical tendencies (Soviet theories of government, etc.) on the administration of Criminal Law.

(e) Any other information touching on criminological, penological or medico-legal subjects, not included in the groups already mentioned.

The sources of information thus obtained were to be *permanent* sources : that is, there was to flow from them a steady stream of information, which could be translated by the committee, the original documents being carefully preserved, and then put into such a form as would make them available for publication in our Journal.

2. Secondly, as a result of the foregoing, the committee hoped to widen the scope of the Institute's influence in European countries : to make its work better known and appreciated, so that the Institute might take a place, to which it is justly entitled, side by side with the older criminological societies and institutes of Europe. The Institute, especially its Journal, is already widely known abroad, but the committee hoped to add something to the luster of its name in the Old World.

So much for the aims of the committee. Now for its achievements.

Unfortunately, several months were lost on account of the illness of the Chairman, which greatly interrupted the work. Moreover the Chairman was unable to secure a meeting of his committee, as its members lived in distant cities, and were all of them eminently busy men. And his own work for the committee had to be done at odd moments, snatched from his daily medico-legal duties in the eleven courts of eleven very busy judges.

The committee, having been duly organized, began its work in December, 1919. A letter was written by the Chairman to each member of the committee, asking him to make out a list of European authorities on Criminal Law, personally known to that member ; to write a letter to each of these authorities, asking information on the five groups of subjects already mentioned ; to send the list of names to the Chairman and to forward to him, in due time, such answers as each might receive from Europe to the letters which they had written.

The Chairman, in January, 1920, prepared *eighteen* long letters, which he addressed to the eighteen embassies and legations of European countries in Washington. He explained what the Institute is, and enclosed in each letter some of the Institute's pamphlets. He explained also the nature of his committee—and he asked each Ambassador and

Minister to have the kindness to secure for him the names of those men and women in each ambassador's country who were authorities on matters of Criminal Law and Criminology. The Chairman was fortunate in knowing personally some of these diplomats, and during the week-ends in Washington he tried to see as many of them as he could, in order to explain his wishes more clearly.

The answers to these letters were most encouraging. Answers were received from the *Spanish*, the *British*, the *Russian*, the *Italian*, the *Belgian*, and the *French* Embassies. From the Legations of *Norway*, of *Poland*, of *Switzerland*, of *Denmark*, of *Sweden*, of *Bulgaria*, of *Roumania*, and from the Legation of the *Serbs*, *Croats* and *Slovenes*. Each of these letters, with one exception, gave a great deal of valuable information, together with the names and addresses of all the important authorities on Criminology in the various European countries. Especially valuable were the letters from the Legations of Poland, and Switzerland, and from the Italian Embassy. The answer from the British Embassy alone contained neither information nor the addresses asked for. The Chairman was referred to the American Embassy in London. Fortunately we were able to fill the gap thus created through the kindness of Joseph H. Choate of New York, whose father was for so many years American Ambassador at the Court of St. James, and who has given the Chairman some letters of introduction to English authorities on Criminal Law, among them, one to "The Director of Public Prosecutions."

The names and addresses thus obtained were carefully listed. There are nearly one hundred of them. Then a letter was drafted that might serve as a general form for all this type of correspondence. It gives a brief outline of what the Institute is; it explains our committee and its objects; it states the five groups of subjects about which we are seeking information; and it requests the person to whom it is addressed to become a regular correspondent of the committee. This long letter cannot be typed in manifold. Each letter must be written separately—and in each case the Chairman has mentioned the fact that the name of the person to whom he is writing has been furnished him by the embassy of that person's country in Washington, in the course of a correspondence between the Chairman and the Embassy, in which the person in question has been mentioned as a well-known authority on Criminal Law.

Thus far (that is, up to July 25, 1920) twenty-three letters have been written to the addresses supplied by the Washington Embassies and Legations. The letters to Poland, because of present unsettled

conditions, were sent to the Polish Legation in Washington to be forwarded from thence. The other letters have all been registered, and thus far none have been returned because of inaccurate address.

Some sixty more letters remain to be written. They will be sent from time to time from the Chairman's office. It is, perhaps, too early to expect many answers as yet. The other members of this committee, with one exception, report that they have had, as yet, no answers from the European friends to whom they wrote. Professor Eliot received one interesting letter from Sweden, which he forwarded to the Chairman.

Among the letters already received from Europe by the Chairman perhaps the most typical and interesting is the letter from Dr. Hafter, Professor of Criminal Law at the University of Zürich, Switzerland. Professor Hafter knows and reads our Journal, but he seems to have heard little about the Institute itself.—He accepts with very warm-hearted courtesy the suggestion that he become a correspondent of our committee—and he promises to send us, every year or oftener, an article on the present conditions and development of Criminal Law in Switzerland, giving especial attention to the reactive influences of American Criminology on the scientific development of the Swiss criminal procedure. This means that we shall have, as far as Switzerland is concerned, a permanent source of information for our Journal and for the Institute.

The conditions in Poland also promise—or they did a few months ago—especial interest. Our correspondents there write that the jurists are confronted with a difficult problem. They have what was once Russian Poland still under the old criminal law of the Czar; they have German Poland, using the "*Strafgesetzbuch*" of the German Empire; and finally Austrian Poland, with its unrevised Austrian code of the time of Maria Theresa. How to combine all three codes or how to evolve a new code for the entire land is the problem that confronts the Polish jurists.

From Italy come also exceedingly interesting accounts of the new Commission for the Reform of the Penal Code, under the Presidency of Professor Ferri, who, fifteen years ago, was considered a hopelessly impractical reformer. Personal letters have also been received from Professor Ferri himself containing much valuable information.

It must appear from this brief report that the work of this committee has only begun. The Chairman regrets that his long illness impeded the committee's activity during part of the past winter. He hopes, if the Institute sees fit to continue the committee, that he may

have much greater material at his disposal during another year, and may also be able to place at the disposition of the Editor of our *Journal* interesting and authoritative information about Criminal Law and Procedure in Europe. Incidentally, he trusts that by means of his continued correspondence with jurists and criminologists, from Norway to Italy and from England to Roumania, the Institute may be brought into closer touch with all men and women of eminence and authority interested in all that interests us, so that wherever the members of any learned European Institute of Society are gathered together there may always be, if not one of our members present there in the flesh, at least some just appreciation of our American Institute and some acknowledgment by the Old World of the debt that it owes to the New in the well-balanced development, the humane administration and the wise reforms of Criminal Law.